



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

**WALTON D. CLARK  
ATTORNEY GENERAL**

**November 25, 1964**

Honorable Jesse James  
Treasurer of the State of Texas  
Capitol Station  
Austin, Texas

Opinion No. C-351

Re: Whether paragraph 9 of  
Chapter 7 of House Bill  
No. 11, Acts of the 56th  
Legislature, Third  
Called Session (Article  
7.08 Tax. Gen.), is in  
conflict with the Texas  
Constitution.

Dear Sir:

By letter of November 9, 1964, you request an opinion of this office as to whether paragraph 9 of Chapter 7 of House Bill No. 11, Acts of the 56th Legislature, Third Called Session (Article 7.08 Tax. Gen.), is constitutional. Said paragraph reads as follows:

"The State Treasurer shall require that payment in full for stamps or meter settings be made within fifteen (15) days from the date the stamps or the set meter are received by the distributor. Upon receipt of an order for stamps or the setting of a meter, the State Treasurer shall ship such stamps or set such meter in compliance with the order and transmit with the stamps or the meter a certified statement showing the amount due for said stamps or meter setting, and the distributor shall forward a remittance as payment in full of the amount certified as due by the State Treasurer within fifteen (15) days after receipt of the stamps or the set meter and the certified statement. Any distributor who fails to forward the proper remittance within fifteen (15) days after receipt of the stamps or the set meter and the certified statement shall be notified by the State Treasurer within five (5) days after the end of the

fifteen day period to appear within five (5) days before the Treasurer to show cause why he should not be denied the privilege of ordering stamps as herein provided, and if such distributor shall fail to show good cause, the Treasurer is hereby authorized to discontinue the shipment of stamps or the setting of meters as provided in this Section."

The provisions of the above paragraph call for the State Treasurer to ship cigarette stamps or ship a set meter for use in stamping cigarettes, without receiving payment for such stamps or set meter, at the time of shipment, with the distributor or recipient of such stamps having 15 days within which to pay for the same. Such practice clearly puts the State of Texas in the business of extending credit to the recipients of cigarette stamps for a period of 15 days. Experience has recently demonstrated that failure of a person or firm to pay within the time prescribed by law causes the State of Texas loss of revenue amounting to thousands of dollars.

Article 3, Section 50 of the Texas Constitution is as follows:

"The Legislature shall have no power to give or to lend, or to authorize the giving or lending, of the credit of the State in aid of, or to any person, association or corporation, whether municipal or other, or to pledge the credit of the State in any manner whatsoever, for the payment of the liabilities, present or prospective, of any individual, association of individuals, municipal or other corporation whatsoever."

The above provision of the Constitution is plain and unambiguous. It clearly states, "The Legislature shall have no power to give . . . the credit of the state . . . to any person, association or corporation. . . ."

This office, in Attorney General's opinion No. 2996, held that the sending by the state of stamps on consignment was a giving or lending of the credit of the state and was in violation of said Section 50 of Article 3 of the Constitution.


It is therefore our opinion that Paragraph 9 of Chapter 7 of House Bill No. 11, Acts of the 56th Legislature, Third Called Session (Article 7.08 Tax. Gen.), is in direct conflict with the above provisions of the Constitution, and is unconstitutional.

S U M M A R Y

Paragraph 9 of Chapter 7 of House Bill No. 11, Acts of the 56th Legislature, Third Called Session (Article 7.08 Tax. Gen.) is unconstitutional.

Yours very truly,

WAGGONER CARR  
Attorney General of Texas

  
GORDON C. CASS  
Assistant Attorney General

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APPROVED BY OPINION COMMITTEE:

W. V. Geppert, Chairman  
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APPROVED FOR THE ATTORNEY GENERAL  
BY ROGER TYLER